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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH A. FARHAT,
Petitioner,

v.

PEOPLE OF THE STATE OF CA, et al.,
Respondents.

Case No. 18-06055 BLF (PR)

ORDER OF DISMISSAL

Petitioner, a state prisoner proceeding *pro se*, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging probation revocation proceedings in Santa Clara County Superior Court. Petitioner has paid the filing fee.

I. DISCUSSION

According to the petition, Petitioner is currently confined at the Elmwood Complex in Santa Clara County. (Pet. at 1.) He indicates that he was sentenced to three years of probation on November 4, 2014, for corporal injury to spouse and a “GBI” (great bodily injury) enhancement. (*Id.* at 2.) Since filing this action, Petitioner has filed a “motion for order to stay of state court proceedings,” requesting that the court order “a stay of all state court proceedings regarding case 214813 currently being held” Santa Clara County

1 Superior Court. (Docket Nos. 20, 22.) Petitioner states that his due process rights under
2 *Morrissey v. Brewer* and *Gagnon v. Scarpelli* are at stake. (*Id.*) These cases establish that
3 probationers are entitled to due process rights. *Morrissey v. Brewer*, 408 U.S. 471 (1972);
4 *Gagnon v. Scarpelli*, 411 U.S. 778 (1973). Based on these allegations, it appears that
5 Petitioner was released on probation for the 2014 conviction and is now back in custody
6 for pending probation revocation hearings. Petitioner also indicates that “sentence not
7 imposed yet.” (Pet. at 5.) Petitioner has not appealed this matter to the state courts. (*Id.* at
8 5.)

9 Under principles of comity and federalism, a federal court should not interfere with
10 ongoing state criminal proceedings by granting injunctive or declaratory relief absent
11 extraordinary circumstances. *See Younger v. Harris*, 401 U.S. 37, 43–54 (1971). *Younger*
12 abstention is required when (1) state proceedings, judicial in nature, are pending; (2) the
13 state proceedings involve important state interests; and (3) the state proceedings afford
14 adequate opportunity to raise the constitutional issue. *See Middlesex County Ethics Comm.*
15 *v. Garden State Bar Ass’n*, 457 U.S. 423, 432 (1982). All three elements must be present.
16 *Agriesti v. MGM Grand Hotels, Inc.*, 53 F.3d 1000, 1001 (9th Cir. 1995) (abstention
17 improper where arrest and issuance of citation were executive acts not judicial in nature,
18 and only potential for future state judicial proceedings existed).

19 Abstention is appropriate here because all the elements of *Younger* are present. As
20 to the first *Younger* element, it appears that Petitioner’s state court proceedings are
21 ongoing since he states that state court proceedings are “currently being held” and that he
22 has not yet been sentenced. (Docket No. 20; Pet. at 5.) As to the second *Younger* element,
23 the Supreme Court has held that “a proper respect for state functions,” such as a state
24 administrative decision to revoke parole as in *Morrissey*, is an important issue of state
25 interest. *See Preiser v. Rodriguez*, 411 U.S. 475, 491–92 (1973) (quoting *Younger*, 401
26 U.S. at 44). As to the third prong of *Younger*, the Court finds no reason that Petitioner
27 cannot pursue his constitutional claims in state court. Thus, *Younger* abstention is
28 applicable here. In applying *Younger*, the Ninth Circuit has held that *Younger* abstention is
only appropriate where the federal court action would have the same practical effect on the

1 state proceeding as a formal injunction. *Gilbertson v. Albright*, 381 F.3d 965, 977–78 (9th
2 Cir. 2004). Here, although Petitioner does not indicate what specific relief he seeks, any
3 injunctive relief provided by this court would have the practical effect of enjoining the
4 state court proceedings.

5 Finally, although *Younger* abstention does not apply in cases where extraordinary
6 circumstances threaten great, immediate and irreparable injury, *see Younger*, 401 U.S. at
7 45–46, 53–54 (irreparable injury shown where statute flagrantly and patently violative of
8 express constitutional prohibitions); *Perez v. Ledesma*, 401 U.S. 82, 85 (1971) (federal
9 injunctive relief in pending state prosecutions proper in cases of proven harassment or
10 prosecutions undertaken by state officials in bad faith without hope of obtaining a valid
11 conviction), Petitioner fails to demonstrate that this is such a case. Petitioner has not
12 proven harassment or made a showing that the revocation of probation was undertaken by
13 state officials in bad faith. Accordingly, this Court will abstain and DISMISS the petition
14 without prejudice. Petitioner’s alleged constitutional violations are matters that can and
15 should be addressed in the first instance by the state superior court, and then by the state
16 appellate courts, before he seeks a federal writ of habeas corpus.

17 Petitioner is advised that he should not file a new federal petition for a writ of
18 habeas corpus unless and until he gets sentenced, and then not until his direct appeal and
19 state habeas proceedings have concluded and he has given the state high court a fair
20 opportunity to rule on each of his claims.

21 Based on the foregoing, Petitioner’s motions for a stay of state court proceedings
22 are DENIED. (Docket Nos. 20, 22.) Petitioner’s motion for discovery, (Docket No. 17),
23 motion for production, (Docket No. 19), motions for expansion of the record, (Docket Nos.
24 21, 26), motion for order to appoint pro per jail liaison, (Docket No. 23), and motion for
25 ruling, (Docket No. 31), are DENIED as moot by this dismissal.

26 II. CONCLUSION

27 For the foregoing reasons, the petition is hereby **DISMISSED**. The dismissal is
28 without prejudice to Petitioner’s filing a new federal habeas petition once his state criminal

proceedings are completed and he has exhausted his state court remedies as to all claims he wishes to raise in federal court.

The Clerk shall terminate all pending motions.

IT IS SO ORDERED.

Dated: January 22, 2019


BETH LABSON FREEMAN
United States District Judge

Order of Dismissal
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